IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6942 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MAVABHAI LIMBABHAI VANKAR

Versus

DIST.MAGISTRATE PANCHMAHAL

Appearance:

MR ANIL S DAVE for Petitioner

MR HL JANI LD AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 18/02/2000

ORAL JUDGEMENT

This Special Civil Application is directed against the order dtd.16th July, 1999 passed by the District Magistrate, Panchmahals, Godhra, whereby the petitioner--detenu was detained under the provisions of the Gujarat Prevention of Anti-social Activities Act,

1985. The petitioner--detenu was sent to District Jail Bhavnagar as was per the order of District Magistrate, Panchmahals at Godhra. The grounds of detention enclosed with the detention order show that there were four criminal cases registered against the petitioner under the Prohibition Act at Shahera Police Station, during the period 16th October, 1997 to 19th May, 1999. The petitioner is said to be engaged in the business of foreign made liquor. In all these cases, chargesheet have been filed in the Court and the trial is pending and the petitioner had been released on bail in all the four cases. The detaining authority has recorded that the petitioner was engaged in the activities of boodlegging. The statements of four witnesses have also been recorded, although the dates on which the statements were recorded have not been given. It has been recorded that the statement were recorded by the Police Inspector, Godhara and since the witnesses had requested, that their identity may not disclosed under Sec.9(2) of the Act. The detaining authority opined that other measures under the Prevention of Anti-social Activities Act are not sufficient to deter the detenu from continue his activities, and therefore, it had become necessary to detain him in public interest.

2. The only argument which have been raised by Mr. Dave is that it is not at all a case of breach of public order and even if the grounds set out with the detention order is taken to be correct, on their face value, they cannot be prejudiced to the public order. Learned A.P.P. Mr. Jani failed to show as to how the ground on which the petitioner-detenu has been detained constitute a case of breach of public order.

3. In view of the settled law as declared by the Supreme Court in several decisions, this Court finds that no case of breach of public order is made out by the detaining authority. The ingredients of any breach of threat to the public order are wanting in the facts of this case. At the most, it can be said to be a case of preach of law and order. The impugned detention order, therefore, cannot be sustained in the eye of law. The detention order dtd. 16th July, 1999 as was passed by District Magistrate, Panchmahals at Godhara. It is directed that the petitioner-detenu Mavabhai Limbabhai Vankar be released forth, if not required under any detention order or in any other criminal case. This Special Civil Application is allowed. Rule is made absolute.

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